

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

STEVEN HOTZE, M.D., WENDELL)	Civil Action
CHAMPION, HON. STEVE TOTH, AND)	No. 4:20-cv-03709-ASH
SHARON HEMPHILL,)	
)	
Plaintiffs,)	
v.)	
)	
CHRIS HOLLINS, in his official capacity as)	
Harris County Clerk,)	
)	
Defendant.)	

MOTION FOR LEAVE TO FILE BRIEF

ON BEHALF OF *AMICI CURIAE* ELECTION LAW PROFESSORS

JOSEPH R. FISHKIN, STEPHEN I. VLADEK AND D. THEODORE RAVE

Professors Joseph R. Fishkin, Stephen I. Vladek, and D. Theodore Rave (“*Amici*”) respectfully move for leave to file the accompanying *amicus curiae* brief to assist the Court in addressing the constitutional questions presented in this case. Under the emergency circumstances of this case and exigent circumstances of preparing this brief over the weekend, *Amici* have not obtained the position of the parties as to whether they consent to this motion.

INTEREST OF *AMICI CURIAE*

Amici are law professors specializing in the study of constitutional rights, election law, and the relationship between federal and state authorities. As such, *Amici* have an academic and professional interest in the development of the law concerning federal courts’ power to interpret of state election law, which is the basis for this case. Furthermore, in light of their extensive academic experiences in the legal regimes underlying this case, *Amici* submit that their expertise

would be useful to the Court: *Amici* can offer both their perspective and analytical context to the important questions of law presented to this Court.

Amici are Professor Joseph R. Fishkin, Marrs McLean Professor in Law, University of Texas School of Law; Stephen I. Vladeck, Charles Alan Wright Chair in Federal Courts at the University of Texas School of Law; and D. Theodore Rave, George A. Butler Research Professor and Associate Professor of Law, University of Houston Law Center.

ARGUMENT

“The extent to which the court permits amicus briefing lies solely with the court’s discretion.” *Cazorla v. Koch Foods of Miss., LLC*, No. 3:10-cv-135-DPJ-FKB, 2014 U.S. Dist. LEXIS 71143, at *10 (S.D. Miss. May 23, 2014) (citing cases). This case presents a matter of extraordinary importance: plaintiffs seek to invalidate more than 100,000 votes, a number so large that there is a significant likelihood that they are asking the Court to decide which candidate for President of the United States will receive Texas’s electoral votes, and to decide the outcome of other races for federal and state offices. This Court has accepted a broad range of *amicus* briefs in important matters. *See State of Texas v. United States*, S.D. Tex. Case No. 1:18-cv-68 (Doc. 244 July 24, 2018).

None of the traditional factors which ordinarily counsel against the involvement of an *amicus curiae* are present here. *Amici*’s involvement will not prejudice any party. *Amici* do not propose to raise new affirmative defenses or inject new facts. *Amici* possess an academic and professional interest in the legal issues presented and seek to offer that perspective to the Court.

CONCLUSION

For the foregoing reasons, *Amici* respectfully request that this Court grant the motion for leave and entertain the *amicus curiae* brief included with this motion and grant the proposed order submitted herewith.

Dated: November 2, 2020

Respectfully submitted,

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